

Kavinoky, Cook, Hepp, Sandler, Gardner & Wisbaum

RECORDATION NO. 8414-⁸⁴¹⁴ Filed & Recorded July 19 1976-12 25 PM

HAROLD V. COOK, 1886-1948

EDWARD H. KAVINOKY
WILLIAM H. HEPP
CHARLES R. SANDLER
ARNOLD B. GARDNER
WAYNE D. WISBAUM
PETER D. COOK
ALLAN R. LIPMAN
SAMUEL L. SHAPIRO
RONALD B. FELMAN
JOSEPH G. SACCO
DAVID L. JONES
RONALD L. JAROS
JOSEPH E. ZDARSKY
GENE M. SIMON
CARMEN M. PINO
RUSSELL J. PIERI
JOHN D. WLADIS
ANTHONY J. LATONA
LINDA A. HEARY
RICHARD E. BERMAN

JUL 19 1976-12 25 PM

INTERSTATE COMMERCE COMMISSION July 15, 1976

6-2014041

NO. 8414-⁸⁴¹⁴

Date JUL 19 1976

Fee \$ 150-

ICC Washington, D. C.

JUL 19 1976-12 25 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Office of the Secretary
Room 1227
Washington, D. C. 20423

Attention: Mildred Lee

Dear Mrs. Lee:

Pursuant to our telephone conversation of this afternoon, enclosed herewith please find the original and two zerox copies of each of the following documents for recordation with the Interstate Commerce Commission pursuant to §20 C of the Interstate Commerce Act:

1. Mortgage, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to 45 70 ton pulpwood cars and 40 70 ton pulpwood flatcar;
2. Assignment, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to a certain lease agreement, as amended, with respect to such cars;

3. Mortgage, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to 40 70 ton capacity wood-chip cars;
4. Assignment, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to a certain lease agreement, as amended, with respect to such cars;
5. Mortgage, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to 100 100 ton steel rotory dump coal gondola cars; and
6. Assignment, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to a certain lease agreement of such cars.

I have enclosed our firm's check made payable to the Interstate Commerce Commission in the amount of \$150.00 in payment of the filing fees that you advised me are necessary. If there are any additional fees to be tendered by us, please let me know.

I have also enclosed a stamped, self-addressed envelope to be utilized by you when you return the recorded instruments to me.

I thank you for your courtesy and cooperation in this matter.

Very truly yours,

KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM

By:


Russell J. Pieri

RJP/sd

Encl.

8424/P
REGISTRATION NO. Filed & Recorded

JUL 10 1976-12 35 PM
INTERSTATE COMMERCE COMMISSION

M O R T G A G E

KNOW ALL MEN BY THESE PRESENTS, that FIRSTMARK MORRISON, INC., a New York corporation having its principal office and place of business at 107 Delaware Avenue, Buffalo, New York, Mortgagor, as collateral security for the payment in full of indebtedness of the Mortgagor contracted to FIRSTMARK CREDIT CORPORATION having its principal office and place of business at 110 East Washington Street, Indianapolis, Indiana, Mortgagee, in the principal amount of \$1,039,098.00 evidenced by a certain Note of the Mortgagor of even date herewith, and any and all sums due and to become due under such Note, together with any and all renewals or extensions or consolidations thereof and interest thereon and all sums which the undersigned Mortgagor at any time may be liable to pay hereunder (all of which is hereinafter referred to as the "Indebtedness"), the Mortgagor hereby sells, transfers and assigns unto the Mortgagee 100 100 Ton Steel Rotary Dump Coal Gondola Cars, Yankeetown Dock Corporation Numbers 200 through 299, together with all repairs, accessories, attachments and other equipment now or hereafter attached thereto. PROVIDED ALWAYS, and this Mortgage is on the express condition, that if the Mortgagor shall pay the Indebtedness in full to the Mortgagee, then this transfer is to be void and of no effect.

AND the Mortgagor does hereby represent and warrant that all of said 100 100 Ton Steel Rotary Dump Coal Gondola Cars have been delivered to Yankeetown Dock Corporation, as Lessee, under and pursuant to the provisions of a certain Lease Agreement, dated October 29, 1971, between Delaware Freight Car Corp (now

merged into Mortgagor), and said Yanketown Dock Corporation, which Lease Agreement was duly recorded with the Interstate Commerce Commission on November 19, 1971, under Recordation No. 6428, and are now in the possession of said Yankeetown Dock Corporation as lessee under said Lease Agreement.

AND the Mortgagor further represents that it is the true and lawful owner of and has the right to mortgage, sell, transfer and assign said 100 100 Ton Steel Rotary Dump Coal Gondola Cars and that (except for the Lease Agreement referred to above) the same are free and clear from any and all liens, claims and encumbrances thereon.

IT IS HEREBY AGREED that in the event of any default by the Mortgagor in the performance of any of the conditions of this Mortgage or in the payment of any installment of principal of or interest on the Indebtedness, or if the Mortgagor shall sell, assign or in any manner dispose of, or attempt to sell, assign or dispose of any of the said cars, other than pursuant to the aforesaid Lease Agreement, or if any of the said cars shall be misused or put to any illegal or unlawful use by any person whosoever or in case of seizure of any of the said cars by any process of law whatsoever, or in the event of the insolvency or bankruptcy of the Mortgagor, whether voluntary or involuntary, or if an application for receivership of any nature be filed or a receiver of any of the assets of the Mortgagor be appointed or if the Mortgagee at any time shall deem itself insecure or its security inadequate, the Mortgagee may declare the entire amount of the Indebtedness then remaining unpaid to be immediately due and payable, without notice thereof to anyone and it shall be lawful for the Mortgagee, or its duly authorized agent, to enter upon the premises of the

Mortgagor, or any place where said cars may be, and, without making any demand for the possession, to take possession thereof and to sell the same at public or private sale without notice of sale which is hereby expressly waived by the Mortgagor, and to apply the proceeds of such sale, after deducting the expenses of such sale and the expenses of taking possession and storing said cars, upon the Indebtedness, the Mortgagee having the right to become the purchaser at such sale the same as a person not interested herein. The rights and remedies herein specified are cumulative and are not exclusive of any rights or remedies which the Mortgagee may otherwise have.

This Mortgage is made pursuant to the Uniform Commercial Code of New York, and all rights and obligations hereunder, and the rights and duties of the parties hereto with respect to the railroad cars and all collateral, including matters of construction, validity and performance, shall be governed by and interpreted in accordance with such Code and with the laws of the State of New York. Wherever possible each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions hereof.

Notwithstanding anything to the contrary contained herein, this Mortgage is made and accepted upon the express condition, understanding and agreement that neither the Mortgagor nor any legal representatives, successors or assigns of the Mortgagor (hereinafter the "Exculpated Class") shall have or incur any

liability with respect to this Mortgage or the Indebtedness secured hereby, and no member of the Exculpated Class shall in any way be obligated to perform any of the terms, covenants, agreements and conditions hereof or be responsible or liable for any other warranties or representations hereof. By acceptance hereof, the Mortgagee and any other holder of this Mortgage or of the Indebtedness secured hereby, upon any default hereunder or thereunder, agree not to demand, take or enter any claims or judgments against any member of the Exculpated Class, but rather to look solely to the security described herein and in a certain Assignment of even date herewith with respect to the above-described Lease Agreement for each and every remedy of the Mortgagee hereunder or thereunder. This exculpation of the liability of the Exculpated Class shall be without any exception whatsoever.

This Mortgage shall inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage this 30th day of June, 1976.

[Seal]

FIRSTMARK MORRISON, INC.

By Robin Siderman
Treasurer

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On this 30th day of June, 1976, before me came RUBIN LITERMAN, to me known, who, being by me duly sworn, did depose and say that he resides at No. 145 Brooklane Drive, Amherst, New York; that he is the Treasurer of FIRSTMARK MORRISON, INC., the corporation described in and which executed the foregoing Mortgage; that he knows the seal of said corporation; that the seal affixed to said Mortgage is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Raymond H. Tworek
RAYMOND H. TWOREK
Notary Public, State of New York

My Commission Expires March 30, 1977

STATE OF Indiana)
COUNTY OF Marion) SS.:

Gary Admire, being duly sworn, according to law, says that he is a Vice President of FIRSTMARK CREDIT CORPORATION, the Mortgagee named in the within Mortgage; that the said Mortgagee, Firstmark Credit Corporation, has a valid claim against the within named Mortgagor which amounts to \$1,039,098.00; that said claim is just and unpaid; and that the within Mortgage is given in good faith to secure the same.

Gary Admire

Sworn to before me and subscribed in my presence this 30th day of June, 1976.

Joan R. Redwine
JOAN REDWINE, Notary Public
My Commission Expires June 13, 1977